

JEROME J. AN  
EDMUND H. KERR  
MARK H. FRANKLIN, JR.  
GEORGE DE SIPIO  
ANDREW W. G. NEWBURG  
JAMES C. BLAIR  
WALTER S. ROTHSCHILD  
RICHARD C. PUGH  
GEORGE WEISZ  
THOMAS H. HAGOORT  
NED B. STILES  
SYDNEY M. CONE, III  
ALAN APPELBAUM  
EDWIN B. MISHKIN  
GEORGE M. COHEN  
STEPHEN L. DINCES  
J. SPEED CARROLL  
PETER S. PAINE, JR.  
ANTHONY C. GOOCH  
ROGER W. THOMAS  
ALBERT S. PERGAM  
GEORGE J. GRUMBACH, JR.  
PETER KARASZ  
LOUIS KAHN  
MARK A. WALKER  
LESLIE B. SAMUELS  
ALLAN G. SPERLING  
PETER H. DARROW  
JAMES F. MUNSSELL  
SANDRA S. WEIKSNER  
J. WEBB MONIZ  
MARIETTA POERIO  
ALAN S. DUNNING  
CHRISTOPHER H. LUNDING  
LAURENT ALPERT  
BARRY M. FOX  
JUDITH A. RIPPES  
VICTOR I. LEWKOW  
ROBERT L. TORTORIELLO  
A. RICHARD SUSKO  
STEPHEN H. SHALEN  
RICHARD F. ZIEGLER  
LEE C. BUCHHEIT  
JAMES M. PEASLEE  
ALAN L. BELLER  
THOMAS J. MOLONEY  
DAVID G. SABEL  
EDWARD D. KLEINBARD  
JONATHAN I. BLACKMAN  
RESIDENT PARTNERS

# CLEARY, GOTTlieb, STEEN & HAMILTON

ONE STATE STREET PLAZA

NEW YORK, N. Y. 10004

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WUI 62985

RCA 235438

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GPS 1/2: (212) 344-0925

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REGISTRATION NO. 146392

JAN 17 1986 -10 45 AM

INTERSTATE COMMERCE COMMISSION

January 16, 1986

Date 1/17/86  
Fee \$ 10.00

ICC Washington, D. C.

GEORGE E. CLEARY  
(1890-1981)  
FOWLER HAMILTON  
(1911-1984)  
LEO GOTTLIEB  
MELVIN C. STEEN  
GEORGE W. BALL  
LYMAN M. TONDEL, JR.  
JAMES G. JOHNSON, JR.  
COUNSEL  
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41, AVENUE DE FRIEDLAND  
75008 PARIS, FRANCE  
1-45 63 14 94  
TELEX: 650021  
FAX GP2: 1-45 63 66 37  
FAX GP3: 1-45 63 35 09  
RUE DE LA LOI 23, BTE 5  
1040 BRUSSELS, BELGIUM  
2-230-2020  
TELEX: 22635  
FAX GP2: 2-230-1835  
FAX GP3: 2-230-9808  
WINCHESTER HOUSE  
77 LONDON WALL  
LONDON EC2N 1DA, ENGLAND  
1-638-5291  
TELEX: 887659  
FAX GP2: 1-600-1698  
FAX GP3: 1-588-5163  
PRINTING HOUSE  
18 ICE HOUSE STREET  
HONG KONG  
5-214122  
TELEX: 60401  
FAX GP3: 5-201190

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
ICC Building  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Sir:

I have enclosed an original and one certified photocopy of the document (the "Document") described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. The numbered paragraphs below provide the information required by the respective numbered paragraphs of 49 C.F.R. § 1177.3(d).

(1) The Document is an assignment of rights under certain other documents, including a conditional sale agreement and a lease of railroad locomotives.

(2) The Document is a secondary document. The primary documents to which the Document is connected, and the Recordation Numbers of such primary documents, are as follows:

*C. J. Bayne*  
*Dis. L. 10/1/86*

<u>Primary Document</u>	<u>Recordation Number</u>
Conditional Sale Agreement dated as of April 15, 1985	14639
Agreement and Assignment dated as of April 15, 1985	14639A
Lease of Railroad Equipment dated as of April 15, 1985	14639B
Assignment of Lease and Agreement dated as of April 15, 1985	14639C

(3) We request that the Document be cross-indexed under the names of (a) General Motors Corporation, (b) Consolidated Rail Corporation, (c) Irving Leasing Corporation, (d) The Connecticut Bank and Trust Company, National Association, and (e) Mercantile-Safe Deposit and Trust Company.

(4) The equipment covered by the Document is 25 Model SD50 Diesel Electric Locomotives, with road numbers 6780 through 6804, inclusive.

(5) The names and addresses of the parties to the Document are:

Assignor: Chemical Bank, 110 East 59th Street,  
New York, New York 10022

Assignee: The Mutual Life Insurance Company  
of New York, 1740 Broadway,  
New York, New York 10019

(6) The party to whom the original of the Document should be returned is The Mutual Life Insurance Company of New York, c/o Macdonald, McInerny, Guandolo, Jordan & Crampton, 1090 Vermont Avenue, N.W., Washington, D.C. 20005.

(7) A filing fee of \$10.00 is enclosed.

(8) A short summary of the document:

Assignment between Chemical Bank, 110 East 59th Street, New York, New York 10022, assignor, and The Mutual Life Insurance Company of New York, 1740 Broadway, New York, New York 10019, assignee, and covering 25 Model SD50 Diesel Electric Locomotives with road numbers 6780 through 6804, inclusive, and connected to a Conditional Sale Agreement, an

James H. Bayne, p. 3

Agreement and Assignment of conditional sale indebtedness, a Lease of Railroad Equipment, and an Assignment of Lease and Agreement with Recordation Nos. 14639, 14639A, 14639B and 14639C, respectively.

Very truly yours,

*Stephen J. Field*

Stephen J. Field (of Cleary,  
Gottlieb, Steen & Hamilton,  
attorney for The Mutual Life  
Insurance Company of New York)

**Interstate Commerce Commission**  
Washington, D.C. 20423

1/17/86

**OFFICE OF THE SECRETARY**

Stephen J. Field  
Cleary, Gottlieb, Steen & Hamilton  
One State St. Plaza  
New York, N.Y. 10004

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/17/86 at 10:45am , and assigned recordation number(s). 14639-D

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

AFFIDAVIT

RECORDATION NO. 14639 Filed 1428

JAN 17 1986 -10 AM

INTERSTATE COMMERCE COMMISSION

COUNTY OF NEW YORK    )  
                                  ) ss:  
STATE OF NEW YORK     )

I, Stephen J. Field, an associate with the firm of Cleary, Gottlieb, Steen & Hamilton, hereby state that I have compared the copy of the Assignment Agreement, dated as of November 15, 1985, between Chemical Bank and The Mutual Life Insurance Company of New York attached hereto with the original of such Assignment Agreement and have found said copy to be identical in all respects to said original.

Stephen J. Field  
Stephen J. Field

Sworn to before me this  
13th day of January, 1986.

Donna Marie Webber  
Notary Public

**DONNA MARIE WEBBER**  
Notary Public, State of New York  
No. 24-4697171  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1987

ASSIGNMENT AGREEMENT

RECORDATION NO. 146392  
JAN 17 1986 - 10:45 AM  
INTERSTATE COMMERCE COMMISSION  
Filed 1425

Assignment Agreement, dated as of November 15, 1985, between CHEMICAL BANK, a New York banking corporation ("Chemical"), and THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a New York corporation ("MONY").

WHEREAS, Chemical has entered into the Participation Agreement (the "Participation Agreement"), dated as of April 15, 1985, among Consolidated Rail Corporation (the "Lessee"), Mercantile-Safe Deposit and Trust Company, as Agent (the "Agent"), The Connecticut Bank and Trust Company, National Association ("CBT"), as Trustee (in such capacity, the "Lessor"), Irving Leasing Corporation (the "Beneficiary"), General Motors Corporation (Electro-Motive Division) (the "Builder"), and Chemical, relating to the leveraged lease financing of 25 SD50 diesel electric locomotives (the "Equipment"); and

WHEREAS, Chemical wishes to assign to MONY, and MONY wishes to accept an assignment from Chemical, subject to the terms and conditions hereof, of certain of Chemical's rights and obligations under or with respect to the Participation Agreement and certain other agreements entered into in connection therewith;

NOW, THEREFORE, the parties hereto agree as follows:

1. (a) Effective upon the closing (the "Closing") on the date (the "Closing Date") to be agreed upon by Chemical and MONY, and subject to the closing conditions referred to in Section 2 hereof, Chemical hereby transfers, assigns and conveys, absolutely and not as collateral security, to MONY, all of Chemical's rights, titles and interests in, to and under (the "Rights"):

(i) the Participation Agreement;

(ii) the Conditional Sale Agreement, (the "CSA") dated as of April 15, 1985, between the Builder and the Lessor;

(iii) the Lease of Railroad Equipment, dated as of April 15, 1985, between the Lessee and the Lessor;

(iv) the Assignment of Lease and Agreement, dated as of April 15, 1985, between the Lessor and the Agent;

(v) the Consent and Agreement, dated as of April 15, 1985, between the Lessee and the Agent;

(vi) the Agreement and Assignment, dated as of April 15, 1985, between the Builder and the Agent;

(vii) the Certificates of Interest (the "Chemical Certificates") dated May 15, 1985, May 30, 1985 and June 17, 1985, issued by the Agent to Chemical and reflecting Chemical's interest in the CSA Indebtedness (such term being used herein as defined in the CSA);

(viii) all rights, if any, to the extent the same are assignable, under all certificates and opinions of counsel delivered in connection with the First Delivery Date on May 6, 1985, and on or with respect to each Closing Date as such term is defined in the CSA; and

(ix) the Trust Estate under the Trust Agreement (the "Trust Agreement"), dated as of April 15, 1985, between the Beneficiary and CBT, including, without limitation, the Equipment (as such term is defined in the Participation Agreement) and the income and proceeds therefrom (including insurance proceeds);

provided, however, that Chemical shall retain for its own account and shall timely pay or satisfy and discharge, and shall hold MONY harmless from and against Chemical's failure to timely pay or satisfy and discharge, the obligation to pay (A) the ongoing fees, expenses and disbursements of the Agent (and of any successor agent) as set forth in Paragraph 12 of the Participation Agreement (except as otherwise provided in Section 6 of the Amendment (as such term is defined below)) and (B) any fees and expenses payable pursuant to the last sentence of such Paragraph as a result of the negotiation, execution or delivery of this Agreement, the Amendment (as hereinafter defined) or any instrument or document executed and delivered in connection therewith; and provided further, however, that Chemical does not transfer, assign or convey to MONY any of Chemical's right, title or interest in or to any indemnity provision of any of the agreements and instruments referred to in clauses (i) through (ix) of Paragraph 1(a) hereof, including without limitation in or to Article 13 of the CSA or Section 6 or 9 of the Lease, to the extent any such indemnity relates to costs or liabilities incurred by Chemical.

(b) In consideration of the foregoing transfer, assignment and conveyance of the Rights (the "Assignment") MONY shall: (i) subject to the first proviso at the end of Section 1(a) hereof, perform such obligations of Chemical under the agreements and other instruments listed in clauses (i) through (viii) above (such agreements and instruments, together with the Trust Agreement, the "Documents") which arise or are first required to be performed on or after the Closing Date (the "Obligations") and be bound by the terms of the Participation Agreement, as amended effective on the Closing Date, as if it had been an original signatory thereto and (ii) shall pay to Chemical the sum (the "Purchase Price") of (1) the product of (A) .9832901 and (B) the outstanding principal amount of the CSA Indebtedness (as such term is defined in the CSA) as of the Closing Date, and (2) the unpaid accrued interest, as of the Closing Date, on such principal amount.

2. (a) The obligations of MONY and its acceptance of the Assignment are subject to the satisfaction at the Closing of the following conditions:

(i) MONY shall have received:

(A) an original, fully executed copy (or set of copies including, for each party thereto, at least one copy signed by such party) of each of the Documents, other than the Chemical Certificates, with a certificate of Chemical to the effect that such copy (or set of copies) is an original counterpart (or set of counterparts) of the Document it purports to be;

(B) one or more Certificates of Interest, dated the Closing Date, issued by the Agent to MONY for its own account or for the account of a separate account managed by MONY (the "MONY Separate Account") (and each reference herein to MONY shall mean, unless the context clearly requires otherwise, MONY on behalf of itself and on behalf of the MONY Separate Account) and reflecting in the aggregate ownership of the principal of, and accrued interest on, the CSA Indebtedness, together with a certificate executed by the Agent to the effect that the Agent has entered the name and address of MONY or the MONY Separate Account, as the case may be, as the owner of the interests in the CSA Indebtedness represented by the Certificate of Interest issued to it, in the written record of the ownership of interests in the CSA Indebtedness maintained by the Agent pursuant to the second paragraph of Paragraph 10 of the Participation Agreement;



(C) true and complete copies of the other schedules, financial statements, letters, opinions, certificates, documents and agreements (other than the Chemical Certificates) delivered to Chemical pursuant to Paragraphs 2, 4, 7 and 8 of the Participation Agreement, with a certificate of Chemical to the effect that such copies are true and complete copies of all documents so delivered;

(D) an amendment of the Participation Agreement, signed by Chemical and the Agent, substantially in the form of Exhibit A hereto (the "Amendment");

(E) a certificate, executed by Chemical, specifying the outstanding principal amount of, and the unpaid accrued interest on, the CSA Indebtedness as of the Closing Date;

(F) counterparts of the July 1, 1985 letters from MONY to the Lessee, the Lessor, the Beneficiary and Chemical, respectively, countersigned by each such addressee;

(G) an opinion of Cravath, Swaine & Moore, as counsel to Chemical and the Agent, dated the Closing Date, substantially in the form of Exhibit B hereto; and

(H) such other receipts and certificates as MONY may reasonably request;

(ii) Chemical shall have delivered to the Agent an irrevocable letter of credit (the "Letter of Credit") of Chemical, dated the Closing Date, and substantially in the form of Exhibit C hereto, and an indemnity agreement (the "Indemnity Agreement") of Chemical, dated the Closing Date, and substantially in the form of Exhibit E hereto;

(iii) Chemical shall have surrendered to the Agent on or before the Closing Date all the Chemical Certificates; and

(iv) The representations and warranties of Chemical in Section 3(a) hereof shall be true and correct as the Closing Date.

(b) The obligations of Chemical hereunder and its making of the Assignment to MONY are subject to (i) Chemical's receipt from MONY at or before the Closing (by wire transfer or check in immediately available funds) of an amount equal to the Purchase Price, (ii) the representations and warranties of MONY hereunder being true and correct as of the Closing Date and (iii) Chemical's receipt of an opin-

ion of staff counsel of MONY, dated the Closing Date, substantially in the form of Exhibit E hereto.

3. (a) Chemical hereby represents and warrants to MONY, and shall be deemed to represent and warrant to MONY on and as of the Closing Date, as follows:

(i) None of the Documents has been amended, supplemented (except by one or more other Documents), cancelled, terminated, or withdrawn and Chemical has not agreed to, and knows of no proposal for, any amendment, supplement, cancellation, termination or withdrawal of any Document (except insofar as any Document is supplemented by one or more other Documents and except for the Amendment).

(ii) Chemical has performed and observed all terms and conditions of any Document to be performed or observed by Chemical on or before the date hereof.

(iii) Chemical has duly authorized, executed and delivered this Agreement and has duly authorized the Amendment, the Letter of Credit and the Indemnity Agreement, and this Agreement constitutes, and when executed and delivered at the Closing, the Amendment, the Letter of Credit and the Indemnity Agreement and, when accepted, any draft accepted by Chemical under the Letter of Credit will each constitute, a legal, valid and binding obligation of Chemical, enforceable against Chemical in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights generally as they may apply in the event of the bankruptcy, insolvency, reorganization or other similar proceeding of, or a moratorium applicable to, Chemical.

(iv) Except pursuant hereto, Chemical has not transferred, assigned or conveyed, or agreed or purported to transfer, assign or convey, to any Person (which term shall mean any person, including without limitation any individual, corporate entity, partnership, trust and governmental authority or entity) any of the Rights or Obligations or any interest therein; the execution, delivery and performance by Chemical of the Assignment is permitted by the Documents and does not require any notice to or consent of any Person pursuant to the Documents or otherwise; upon the Closing, this Assignment Agreement validly and effectively transfers, assigns and conveys to MONY the Rights free and clear of any interest or claim of any other Person; and, except as otherwise provided in Paragraph 16 of the Participation Agreement, upon the Closing, the Amendment validly and effectively amends the Participation Agreement.

(v) No authorization or approval from, or filing or recordation with, any governmental or public body or authority of the United States of America, or of any of the states thereof or the District of Columbia or of Canada is required (i) in connection with the execution, delivery and performance by Chemical of this Assignment Agreement, the Amendment, the Letter of Credit or the Indemnity Agreement, the acceptance by Chemical of any draft presented for acceptance in accordance with the Letter of Credit, or the payment by Chemical of any such draft accepted by Chemical, (ii) to effectuate the assignment of the rights, titles and interests purported to be assigned by Chemical to MONY under this Assignment Agreement, or to establish the priority of MONY's rights with respect to any of such rights, titles and interests over the claims of any other Person purporting to be a direct or indirect transferee thereof from Chemical, or (iii) to render this Assignment Agreement, the Amendment, the Participation Agreement as amended by the Amendment, the Letter of Credit, the Indemnity Agreement or any draft accepted by Chemical under the Letter of Credit a legal, valid, binding and enforceable obligation of Chemical.

(vi) Assuming, in the case of any draft accepted under the Letter of Credit in an amount less than \$1,000, the effectiveness on January 1, 1986 of the amendments to Section 217.7 of Regulation Q of the Board of Governors of the Federal Reserve System, 12 CFR part 217, adopted pursuant to Section 1204.121 of the regulations of the Depository Institutions Deregulation Committee, 12 CFR § 1204.121, no payment made pursuant to the Letter of Credit, any draft accepted thereunder or the Indemnity Agreement will be subject to a penalty under said Regulation Q or Section 1204.103 of the regulations of said Committee, 12 CFR § 1204.103.

(vii) All units of Equipment to be delivered under the CSA have been delivered to and accepted by the Lessor, with the consent of the Lessee; the aggregate Purchase Price (as defined in the CSA) for such units is \$32,535,350.00, which amount has been paid in full to the Builder; the aggregate outstanding principal amount of the CSA Indebtedness, as of the date hereof, is \$18,057,034.66; and the aggregate amount of unpaid accrued interest on such principal amount, as of the date hereof, is \$882,657.41.

(b) MONY hereby represents and warrants to Chemical, and shall be deemed to represent and warrant to Chemical on and as of the Closing Date, as follows:

(i) MONY is acquiring its interest hereunder in the CSA Indebtedness for its own account or for the account of one or more pension or trust funds or institutional accounts, for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same, provided, however, that the disposition of its property will at all times be within its control.

(ii) MONY has duly authorized, executed and delivered this Agreement and the Amendment, and each of this Agreement and the Amendment constitutes a legal, valid and binding obligation of MONY, enforceable against MONY in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(iii) MONY is acquiring its interest in the CSA Indebtedness with its general assets, or, if MONY is acquiring its interest in whole or in part with the assets of an "employee benefit plan" as defined in ERISA, assuming that none of the Lessee, the Lessor, the Beneficiary and Chemical is a party in interest (as such term is defined in Section 3(14) of ERISA) with respect to any employee benefit plan listed in the letters referred to in Section 2(a)(i)(F) above, the use of such assets does not constitute a prohibited transaction under § 406(a) of ERISA.

(iv) The appointment, pursuant to Paragraph 2(b) of the Amendment, by MONY and the MONY Separate Account of the Agent as attorney-in-fact for the purpose of executing assignments to Chemical of the CSA Indebtedness in connection with a drawing under the Letter of Credit constitutes a legal and valid appointment of the Agent as attorney-in-fact for such purpose, binding upon MONY and the MONY Separate Account, and effective to confer upon the Agent all the powers required in order to make each such assignment a legal, valid and binding obligation of MONY and the MONY Separate Account, as the case may be, enforceable against such parties in accordance with its terms.

4. Upon the execution of this Agreement, Chemical shall pay MONY (by wire transfer or official check of Chemical) a nonrefundable commitment fee equal to \$67,713.88.

Whether or not the Closing shall occur, Chemical shall pay, or reimburse MONY for (a) all of MONY's reasonable expenses incident to this Agreement and any agreement

or instrument contemplated to be entered into or executed in connection herewith on or before or in connection with the Closing, including without limitation all costs of producing this Agreement, any such agreement or instrument, and any other agreement or other document prepared in connection with a proposed loan by MONY to Chemical to finance Chemical's interest in the CSA Indebtedness and (b) any stamp, documentary or transfer taxes payable in connection with the execution and delivery of this Agreement or the issuance to MONY or the MONY Separate Account at the Closing of a Certificate of Interest with respect to the CSA Indebtedness. Chemical shall save MONY harmless, without limitation as to time, against any and all liabilities (including any interest or penalty for non-payment or a delay in payment) with respect to such taxes.

5. Chemical shall take such other actions, and execute and deliver such other documents, as MONY may hereafter reasonably request to effectuate the assignment of the rights, titles and interests assigned by Chemical to MONY hereunder or to enable MONY to enforce such rights, titles and interests.

6. MONY shall not, without the prior written consent of Chemical, assign its right, title and interest in the CSA Indebtedness if, in connection therewith, the certificate of interest in the CSA Indebtedness issued to MONY or the MONY Separate Account, as the case may be, at the Closing is to be surrendered in exchange for a new certificate of interest therein unless (a) such assignment complies with any applicable provisions of the Participation Agreement, (b) only one such certificate of interest shall be issued in exchange for such surrendered certificate of interest and (c) the record holder of such new certificate of interest delivers to Chemical an instrument containing a representation corresponding to Section 3(b)(iv) hereof and a covenant corresponding to this Section 6 and an opinion of counsel reasonably satisfactory to Chemical (which may be staff counsel) corresponding to paragraph 2 of the form of opinion of counsel set forth as Exhibit D hereto.

7. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing one or more counterparts.

8. The representations and warranties of each party hereto shall survive the Closing and any investigation made by the other party hereto.

9. This Agreement shall bind and inure to the benefit of each party hereto and its respective successors and assigns.

10. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the law of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

THE MUTUAL LIFE INSURANCE  
COMPANY OF NEW YORK

By Emilia Wiener  
Title Assistant Vice President

Acknowledged:

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

CHEMICAL BANK

By John P. Shaw  
Title Vice President

[Seal of The Mutual Life Insurance  
Company of New York]

Acknowledged for The Mutual Life  
Insurance Company of New York

John R. McFady  
ASSISTANT SECRETARY

9. This Agreement shall bind and inure to the benefit of each party hereto and its respective successors and assigns.

10. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the law of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

THE MUTUAL LIFE INSURANCE  
COMPANY OF NEW YORK

By \_\_\_\_\_

Title \_\_\_\_\_

Acknowledged:

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

CHEMICAL BANK

By \_\_\_\_\_

Title \_\_\_\_\_

[Seal of Chemical Bank]

Acknowledged for Chemical Bank

Wm. J. Hain  
Assistant Secretary

9. This Agreement shall bind and inure to the benefit of each party hereto and its respective successors and assigns.

10. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the law of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

THE MUTUAL LIFE INSURANCE  
COMPANY OF NEW YORK

By \_\_\_\_\_

Title \_\_\_\_\_

Acknowledged:

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_ VICE PRESIDENT

CHEMICAL BANK

By Walter T. DeLune

Title Vice President



STATE OF NEW YORK )  
 : ss.:  
COUNTY OF NEW YORK )

On this 10<sup>th</sup> day of December, 1985, before me personally appeared Emilia F. Wiener, to me personally known, who being by me duly sworn, says that she is an Assistant Vice President of THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lynne Deri  
Notary Public

LYNNE DERI  
NOTARY PUBLIC, State of New York  
No. 41-4613347  
Qualified in Queens County  
Term Expires March 30, 1987

[Notarial Seal]

My Commission expires 3-30-87

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On this 3 day of December, 1985, before me personally appeared Dieter H. Boehme, III, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen M. Wells  
Notary Public

[Notarial Seal]

My Commission Expires

KATHLEEN M. WELLS  
Notary Public, State of New York  
No. 31-16761  
Qualified in New York County  
Commission Expires March 30, 1987

PARTICIPATION AGREEMENT  
AMENDMENT NO. 1

THIS PARTICIPATION AGREEMENT AMENDMENT NO. 1, dated as of November 15, 1985, among MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation (the "Agent"), CHEMICAL BANK, a New York corporation ("Chemical"), and THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a New York corporation ("MONY").

WHEREAS, Chemical, MONY and the Agent have entered into an Assignment Agreement, dated as of November 15, 1985 (the "Assignment Agreement"), pursuant to which, upon the fulfillment of the applicable conditions precedent, (i) Chemical agrees, among other things, to assign to MONY certain of its rights and obligations under the Participation Agreement and certain other documents delivered in connection therewith and (ii) MONY agrees, among other things, to purchase from Chemical its interest in the CSA Indebtedness (as such term is defined in the CSA) and to accept such assignment; and

WHEREAS, as a consequence of and as a condition precedent to the consummation of the transactions described above, certain amendments and supplements to the Participation Agreement, dated as of April 15, 1985 (the "Participation Agreement"), among the Agent, Consolidated Rail Corporation, Irving Leasing Corporation, The Connecticut Bank and Trust Company, National Association, individually and as trustee, General Motors Corporation (Electro-Motive Division), and Chemical are necessary or appropriate to evidence the rights and obligations of the parties thereto; and

WHEREAS, capitalized terms used herein and not otherwise defined are used as defined in the Participation Agreement;

NOW, THEREFORE, in consideration of the foregoing and the agreements herein contained, the parties hereto agree as follows:

1. The second paragraph of Paragraph 1 of the Participation Agreement is hereby amended by inserting "and the Letter of Credit (as such term is defined in Paragraph 10 hereof)" immediately after "Agreement".

2. Paragraph 10 of the Participation Agreement is hereby amended as follows:

(a) The first paragraph of said Paragraph is amended by inserting "or 13.66% per annum, as the case may be" immediately after "12.66% per annum".

(b) The following three paragraphs are inserted immediately after the first full paragraph of said Paragraph:

"Chemical Bank shall issue a letter of credit (the 'Letter of Credit'), substantially in the form of Exhibit E hereto, in favor of the Agent (or any successor agent which is the Agent's transferee under the Letter of Credit) in support of the obligations of the Vendee to pay the principal of and interest on the CSA Indebtedness (irrespective of the provisions of Article 4 or 21 of the CSA or any other provision thereof limiting the liability of the Vendee).

"If the Agent receives instructions from Investors holding 66-2/3% of the outstanding principal amount of the CSA Indebtedness stating that (i) an event referred to in paragraph 2 of Exhibit A to the Letter of Credit has occurred and is continuing and (ii) the Agent shall make a drawing under the Letter of Credit in accordance with subparagraph (ii) or (iii) of paragraph 2 of the Letter of Credit (and such instructions shall specify which of such subparagraphs shall apply), the Agent shall forthwith (1) prepare and execute a certificate in the form of Exhibit A to the Letter of Credit and one or more time drafts in the form of Exhibit B to the Letter of Credit necessary to make a drawing in accordance with such instructions and, as attorney-in-fact for each holder of an interest in the CSA Indebtedness, an Assignment substantially in the form of Exhibit C to the Letter of Credit, and (2) present such certificate, drafts and Assignments to Chemical Bank in accordance with the Letter of Credit. The Agent shall, upon receipt from Chemical Bank of drafts accepted under the Letter of Credit, deliver to each owner of an interest in the CSA Indebtedness the drafts payable to the order of such owner (disregarding for purposes of this sentence the Assignments delivered to Chemical Bank in connection with the presentation of such drafts).

"Unless a drawing is theretofore made under the Letter of Credit, the Agent shall, on the first business day after the first date on which the entire principal amount of the CSA Indebtedness and all interest thereon has been paid, execute and deliver to Chemical

Bank a notice substantially in the form of Exhibit D to the Letter of Credit."

(c) The fourth sentence of the sixth paragraph of said Paragraph (not counting the paragraphs added pursuant to Section 2(b) hereof) is amended by:

(i) inserting ", the Letter of Credit" immediately after "under the CSA";

(ii) inserting "and shall not take any action which would amend, waive any provision of, or extend the time for any acceptance under, the Letter of Credit without the written consent of all of the Investors" immediately after "the written consent of such Investor"; and

(iii) inserting ", which action shall include, without limitation, the making of a demand for acceptance of drafts under the Letter of Credit as and when required under the third paragraph of this Paragraph 10" immediately after "Documents".

(d) The sixth paragraph of said Paragraph (not counting the paragraphs added pursuant to Section 2(b) hereof) is amended by adding the following sentence at the end thereof:

"Notwithstanding any other provision hereof, so long as the Letter of Credit is outstanding and Chemical Bank has not failed to perform any obligation thereunder as and when performance of such obligation is due, unless so directed in writing by all of the Investors, the Agent shall not, without the prior written consent of Chemical Bank, (i) commence any proceeding or foreclosure against any collateral securing the CSA Indebtedness or (ii) consent to any amendment to or waiver of any provision of the CSA or any other document relating to the transactions contemplated thereby (if such amendment or waiver requires the consent of the Agent)."

(e) The eighth paragraph of said Paragraph (not counting the paragraphs added pursuant to Section 2(b) hereof) is amended by inserting ", or given by it to Chemical Bank pursuant to the Letter of Credit," immediately after "Documents".

(f) The last sentence of the last paragraph of said Paragraph is hereby amended by inserting "provided, however, that the Agent shall deliver to the successor Agent the Letter of Credit and an executed notice of transfer substantially in the form of Exhibit E to the Letter of Credit" immediately after "hereunder".

3. Paragraph 13 of the Participation Agreement is hereby amended to read as follows:

"All documents, instructions and notices deliverable hereunder to the Agent shall be delivered to it, by hand, mail, or facsimile transmission, at its office at 2 Hopkins Plaza (P.O. Box 2258, for mail deliveries), Baltimore, Maryland 21203, facsimile number (301)237-5854, Attention of Corporate Trust Department or to such other address or number as it may specify by notice to the other parties hereto in writing."

4. The first sentence of Exhibit C to the Participation Agreement is hereby amended by inserting "or its direct or indirect predecessor in interest" immediately after "(the 'Investor')" and immediately after "paid by the Investor".

5. The form of Letter of Credit attached as Exhibit E hereto is hereby made Exhibit E to the Participation Agreement.

6. Notwithstanding the transfer of Chemical's interest in the CSA Indebtedness to MONY, Chemical shall pay all amounts payable under the second sentence of Paragraph 12 of the Participation Agreement and all amounts payable under the fourth sentence of said Paragraph in connection with this Amendment, and neither MONY nor any successor or assign of MONY shall have any liability with respect thereto; provided, however, that MONY (or such successor or assign, as the case may be) shall be liable to the Agent for any amounts payable under the second sentence of said Paragraph 12 insofar as such amounts are attributable to any action of the Agent taken at the request of MONY (or such successor or assign, as the case may be) if (a) such request is unreasonable or (b) MONY (or such successor or assign, as the case may be) requests the Agent to take any action to protect the collateral for the CSA Indebtedness at a time when the Agent is entitled to make a drawing under the Letter of Credit (as such term is defined in Paragraph 10 of the Participation Agreement as amended hereby) and Chemical has not consented in writing to such request.

7. The parties hereto acknowledge that the Assignment Agreement constitutes an appropriate agreement required by the last sentence of Paragraph 6 of the Participation Agreement with respect to the transfer to MONY of Chemical's interest in the CSA Indebtedness and that, upon the Closing (as such term is defined in the Assignment Agreement), MONY shall be the Investor, and Chemical shall cease to be the Investor, for purposes of the Participation Agreement, except as provided in Section 6 hereof.

8. All documents and notices deliverable to MONY pursuant to the Participation Agreement shall be delivered to it, by hand, mail or facsimile transmission, at its office at 1740 Broadway, New York, New York 10019, facsimile number (212) 708-3044, Attention: Securities Investment Department, or as MONY may otherwise specify by notice in writing to the other parties hereto. All payments to be made to MONY (or any separate account managed by MONY) pursuant to the Participation Agreement shall be paid to MONY's account at Chemical Bank, Columbus Circle Branch, Security Remittance Account No. 321-023803, or to such other account or bank as MONY may specify in writing to the Agent.

9. Except as expressly amended by or provided in this Agreement, the Participation Agreement shall remain in full force and effect. All references in the Participation Agreement to "this Agreement", "herein", "hereof", "this Participation Agreement", "hereunder", "hereby" or other like words, and all references to the Participation Agreement in any other Document, shall mean the Participation Agreement as amended by this Agreement.

10. This Amendment No. 1 shall take effect upon the Closing, and the Agent shall notify each party to the Participation Agreement (other than Chemical) of the occurrence of the Closing.

11. The terms of this Agreement and all rights and obligations of the parties hereto hereunder shall be governed by, and construed in accordance with, the laws of the State of New York.

12. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any coun-

terpart be signed by all the parties so long as each party hereto shall have executed one counterpart hereof which, subject to Section 10 hereof, shall be effective upon delivery thereof to Cravath, Swaine & Moore or Chemical.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

[Corporate Seal]  
Attest:

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY

By \_\_\_\_\_

By \_\_\_\_\_  
Title:

CHEMICAL BANK

By \_\_\_\_\_  
Title:

THE MUTUAL LIFE INSURANCE COMPANY  
OF NEW YORK

By \_\_\_\_\_  
Title:

Exhibit B

[Letterhead of Cravath, Swaine & Moore]

[date]

Transfer of Interest in Consolidated Rail  
Corporation 12.66% Conditional Sale Indebtedness  
due June 26, 2006

Dear Sirs:

We have acted as special counsel for Chemical Bank ("Chemical") and for Mercantile-Safe Deposit and Trust Company, acting as agent ("Agent") under the Participation Agreement, dated as of April 15, 1985 (the "Participation Agreement"), among the Agent, Consolidated Rail Corporation, The Connecticut Bank and Trust Company, National Association, as trustee, Irving Leasing Corporation, General Motors Corporation (Electro-Motive Division), and Chemical, in connection with the Assignment Agreement, dated as of November 15, 1985 (the "Assignment Agreement"), providing for, among other things, the transfer by Chemical to you of all of Chemical's interest in the CSA Indebtedness (as such term is used in the Assignment Agreement), Participation Agreement Amendment No. 1, dated as of November 15, 1985 (the "Amendment"), among the parties to the Participation Agreement, the Letter of Credit, dated \_\_\_\_\_, 1985 (the "Letter of Credit"), issued by Chemical for the benefit of the Agent substantially in the form of Exhibit C to the Assignment Agreement, and the Indemnity Agreement, dated as of \_\_\_\_\_, 1985 (the "Indemnity Agreement"), issued by Chemical for the benefit of you and a separate account managed by you and any transferee thereof as holder of an interest in the CSA Indebtedness.

We have examined originals, or copies certified or otherwise identified to our satisfaction, of the Participation Agreement, the Assignment Agreement, the Amendment, the Letter of Credit, the Indemnity Agreement and such other documents, corporate records and other instruments as we have deemed necessary for the purposes of this opinion. Based upon such examination, we are of opinion as follows:



1. Chemical is validly existing as a banking corporation under the laws of the State of New York and has the power and authority under its charter and the Banking Law of the State of New York to execute and deliver, and to perform its obligations under, the Assignment Agreement, the Amendment, the Letter of Credit, the Indemnity Agreement and each draft accepted by Chemical in accordance with the Letter of Credit.

2. The Assignment Agreement, the Amendment, the Letter of Credit, and the Indemnity Agreement have each been duly authorized, executed and delivered by Chemical, and each is, and each draft, when accepted by Chemical pursuant to the Letter of Credit, will be, a legal, valid and binding obligation of Chemical enforceable against Chemical in accordance with its terms (subject to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, as they may apply in the event of the bankruptcy, insolvency, reorganization or other similar proceeding of, or a moratorium applicable to, Chemical).

3. The Amendment has been duly authorized, executed and delivered by the Agent, and the Participation Agreement, as amended by the Amendment, is a legal, valid and binding obligation of the Agent, enforceable against the Agent in accordance with its terms (subject to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally).

4. The Assignment Agreement vests you with all the rights, titles and interests purported to be assigned to you by Chemical thereunder.

5. No authorization or approval from, or filing or recordation with, any governmental or public body or authority of the United States of America or of the State of New York is required (i) in connection with the execution, delivery and performance by Chemical of the Assignment Agreement, the Amendment, the Indemnity Agreement or the Letter of Credit, the acceptance by Chemical of any draft presented for acceptance in accordance with the Letter of Credit, or the payment by Chemical of any such draft accepted by Chemical, or in connection with the execution, delivery and performance by the Agent of the Amendment or the Participation Agreement, as amended by the Amendment,

(ii) to effectuate the assignment of the rights, titles and interests purportedly assigned by Chemical to you under the Assignment Agreement, or to establish the priority of your rights with respect to any of such rights, titles and interests over the claims of any other Person (as such term is defined in the Assignment Agreement) purporting to be a direct or indirect transferee thereof from Chemical, or (iii) to render the Assignment Agreement, the Amendment, the Participation Agreement as amended by the Amendment, the Letter of Credit, the Indemnity Agreement or any draft accepted by Chemical under the Letter of Credit a legal, valid, binding and enforceable obligation of Chemical or the Agent, as the case may be.

6. No payment made pursuant to the Letter of Credit or any time draft accepted thereunder or pursuant to the Indemnity Agreement will be subject to a penalty under Regulation Q of the Board of Governors of the Federal Reserve System, 12 CFR part 217, or Section 1204.103 of the regulations of the Depository Institutions Deregulation Committee, 12 CFR § 1204.103. We have assumed for purposes of the opinions in paragraphs nos. 2 and 6 that (i) no payment pursuant to any time draft accepted pursuant to the Letter of Credit is made prior to the date such payment is to be made as specified in such time draft and (ii) with respect to any draft in an amount less than \$1,000, that the amendments to Section 217.7 of said Regulation Q adopted pursuant to Section 1204.121 of the regulations of said Committee, 12 CFR § 1204.121, become effective on January 1, 1986.

Very truly yours,

The Mutual Life Insurance  
Company of New York  
1740 Broadway  
New York, New York 10019

Chemical Bank  
55 Water St.  
New York, N.Y. 10041

Exhibit C

Irrevocable Letter of Credit No. C-289790

November 15, 1985

Mercantile-Safe Deposit and  
Trust Company, as Agent,  
Two Hopkins Plaza,  
Baltimore, Maryland 21203  
Attention: Corporate Trust Department

Gentlemen:

We hereby establish in your favor, in your capacity as Agent pursuant to the Participation Agreement dated as of April 15, 1985, among you, Consolidated Rail Corporation (the "Lessee"), The Connecticut Bank and Trust Company, National Association ("CBT"), as Trustee (in such capacity, the "Vendee"), Irving Leasing Corporation ("Irving"), General Motors Corporation (Electro-Motive Division) (the "Builder") and us, as it may be amended from time to time (the "Participation Agreement"), this Irrevocable Letter of Credit (the "Letter of Credit") with respect to the obligations of the Vendee under the CSA (as hereinafter defined) to pay the principal of and interest on the CSA Indebtedness (as hereinafter defined), irrespective of the provisions of Article 4 or 21 of the CSA or any other provision thereof limiting the liability of the Vendee. This Letter of Credit is issued to you for the benefit of the registered holders from time to time (the "Holders") of interests in the 12.66% Conditional Sale Indebtedness due June 26, 2000 (the "CSA

Indebtedness"), under the Conditional Sale Agreement dated as of April 15, 1985, between the Builder and the Vendee, as it may be amended from time to time (the "CSA"), as such interests are reflected in the certificates of interest (the "Certificates of Interest") issued by you to such Holders pursuant to the CSA.

1. The maximum amount available for drawing hereunder pursuant to the presentation of a single time draft for each Holder as provided in Paragraph 2(ii) below (the "Maximum Amount") initially shall be \$19,484,713.59. The maximum amount available for drawing hereunder pursuant to the presentation of two or more time drafts for each Holder as provided in Paragraph 2(iii) below (the "Alternate Maximum Amount") initially shall be \$29,499,451.45. The Maximum Amount and the Alternate Maximum Amount shall each be reduced or increased, as the case may be, from time to time on the dates (each such date a "Reduction Date") and to the amounts set forth in Schedule I hereto. The Maximum Amount and Alternate Maximum Amount set forth opposite each Reduction Date on Schedule I are applicable from and including such Reduction Date to but not including the next Reduction Date. At no time shall the amount drawable hereunder exceed the Maximum Amount or Alternate Maximum Amount, as applicable at such time, determined as provided herein.

2. Subject to the further provisions of this Letter of Credit, a single drawing may be made by you hereunder at any time after the date hereof and prior to August 1, 2000, or, if such day is not a Business Day, on the next succeeding Business Day, by presentation to us at our Letter of Credit Department at 55 Water Street, New York, New York 10041, or at any other address in New York City as we may designate by notice in writing to you, of:

(i) a certificate in the form set forth in Exhibit A hereto (an "Agent's Certificate") signed by one who states therein that he is a duly authorized vice president or assistant vice president of your company and dated the date such certificate is presented hereunder (the "Drawing Date");

(ii) unless the election provided in subparagraph (iii) below is made, a single time draft for each of up to two Holders on the Drawing Date in the form set forth in Exhibit B hereto (A) drawn by you and payable to such Holder (with such Holder's name inserted therein where indicated in Exhibit B) on us, (B) bearing the number of this Letter of Credit, (C) dated the Drawing Date, (D) having inserted therein where indicated in Exhibit B as a value date the first Business Day that is or follows the seventh day after the Drawing Date and (E) having inserted therein where

indicated in Exhibit B an amount not exceeding such Holder's proportionate interest in the Maximum Amount then drawable hereunder as provided in Paragraph 1 hereof;

(iii) if you shall so elect, in lieu of a single time draft as provided in subparagraph (ii) above, a combination of:

(a) a time draft for each of up to two Holders on the Drawing Date in the form set forth in Exhibit B hereto (each an "Initial Time Draft") (A) drawn by you and payable to such Holder (with such Holder's name inserted therein where indicated in Exhibit B) on us, (B) bearing the number of this Letter of Credit, (C) dated the Drawing Date, (D) having inserted therein where indicated in Exhibit B as a value date the first Business Day that is or follows the seventh day after the Drawing Date and (E) having inserted therein where indicated in Exhibit B an amount not exceeding such Holder's proportionate interest in the lesser of (x) the then-applicable Maximum Amount and (y) the sum of (1) the amount of principal of, and interest on, the CSA Indebtedness in default (not taking into account any acceleration of the CSA Indebtedness pursuant to the CSA but including any

such amount payable by reason of a Casualty Occurrence (as such term is defined in the CSA)) as of the Drawing Date and (2) interest at the Overdue Rate (as such term is defined in the CSA) on any such amount in default (to the extent payable under the CSA) from the date such amount in default was due to the value date of such Initial Time Draft, and

(b) for each of up to two Holders on the Drawing Date, up to 10 additional time drafts (or, if there shall be fewer than 10 Payment Dates (as hereinafter defined) after the Drawing Date, a number of time drafts not exceeding the number of such remaining Payment Dates; such additional time drafts being hereinafter referred to as "Additional Time Drafts"), each in the form set forth in Exhibit B hereto, (A) drawn by you and payable to such Holder (with such Holder's name inserted therein where indicated in Exhibit B) on us, (B) bearing the number of this Letter of Credit, (C) dated the Drawing Date, (D) having inserted therein as value dates, where indicated in Exhibit B, respectively, consecutive payment dates as set forth on Schedule II hereto (each such date a "Payment Date"), commencing the Payment Date

next following the Drawing Date; provided,  
however, that if such next Payment Date shall be  
less than seven days after the Drawing Date, the  
value date of the Additional Time Drafts earliest  
to mature shall be the first Business Day that is  
or follows the seventh day after the Drawing Date,  
and (E) each having inserted therein, where  
indicated in Exhibit B, a dollar amount not  
exceeding such Holder's proportionate interest in  
the sum of (1) the amount set forth on Schedule II  
under the heading "Debt Service" opposite the  
value date of such draft (or, if such value date  
is not a Payment Date, the amount so set forth  
opposite the immediately preceding Payment Date)  
plus, in the case of the Additional Time Drafts  
latest to mature, the amount set forth on Sche-  
dule II under the heading "Principal Outstanding"  
opposite the value date of such draft and (2) in  
the case of Additional Time Drafts with a value  
date that is not a Payment Date because of the  
proviso in the preceding clause (D), the amount of  
interest that accrues on the amount referred to in  
the immediately preceding clause (E) (1) from the  
date that would have been the value date of such  
Additional Time Drafts but for such proviso to the



value date thereof at the Overdue Rate, based on a year of 365 days and the actual number of days elapsed;

(iv) the original of this Letter of Credit;

(v) all Certificates of Interest then outstanding;  
and

(vi) for each Holder on the Drawing Date, an assignment of all such Holder's interest in the CSA Indebtedness in the form set forth in Exhibit C hereto, duly executed by or on behalf of such Holder.

3. For purposes of this Letter of Credit:

(i) "Business Day" means any day other than a Saturday, a Sunday or a day on which federally insured commercial banking institutions in the City of New York or in the city referred to in your address as set out above are authorized or obligated by law to be closed.

(ii) "Successor Agent" means a successor to you as Agent appointed in accordance with Paragraph 10 of the Participation Agreement and any subsequent successors so appointed.

4. This Letter of Credit shall automatically terminate prior to the expiry date specified herein upon your presentation to us at our Letter of Credit Department

of the following documents, such termination to be effective on the date following the date such documents are presented to our Letter of Credit Department:

(i) a certificate in the form attached as Exhibit D hereto signed by one who states therein that he is a duly authorized vice president or assistant vice president of your company and dated the date such certificate is presented hereunder; and

(ii) the original of this Letter of Credit.

5. Except insofar as this Letter of Credit specifically refers to any other agreement, this Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified or amended by reference to any other document whatsoever. We acknowledge that our obligations hereunder are independent of, and not conditioned upon, the payment to us of any fee with respect to this Letter of Credit.

6. This Letter of Credit is neither transferable nor assignable except that, notwithstanding Article 54(e) of the Uniform Customs and Practice referred to in Paragraph 9 below, this Letter of Credit is transferable on one or more occasions in its entirety (but not in part) to a Successor Agent. Transfer of this Letter of Credit to such Successor Agent shall be effected by the presentation to us of the original of this Letter of Credit accompanied by a notice of

transfer, signed by one purporting to be one of your vice presidents or assistant vice presidents, substantially in the form of Exhibit E hereto (the delivery of which documents shall be conclusive evidence of such transfer). Upon receipt of this Letter of Credit and such notice, we shall issue to such Successor Agent a replacement letter of credit identical to this Letter of Credit except for substitution of the name and address of such Successor Agent for your name and address where appropriate.

7. If at any time prior to presentation of drafts for acceptance hereunder, we receive a certificate signed by one who states therein that he is a duly authorized vice president or assistant vice president of your company, stating that this Letter of Credit has been lost, stolen, mutilated or destroyed, we will, upon receipt of (i) in the case of mutilation of the Letter of Credit, the mutilated Letter of Credit, and (ii) in other cases, such proof of loss as we shall reasonably specify, issue to you a replacement letter of credit dated the same date, bearing the same number and containing the same provisions as this Letter of Credit.

8. If at any time prior to presentation for payment hereunder of a time draft accepted by us as provided herein, we receive a certificate signed by one who states therein that he is a duly authorized vice president or

assistant vice president of the holder of such time draft, stating that such time draft has been lost, stolen, mutilated or destroyed, we will, upon receipt of (i) an indemnity bond, in form and substance satisfactory to us and issued by an insurance company or surety acceptable to us; provided, however, that if the holder of such time draft is The Mutual Life Insurance Company of New York (for its own account or any account managed by it), the holder's own agreement of indemnity shall be deemed to be satisfactory, (ii) in the case of the mutilation of such time draft, such mutilated time draft and (iii) in other cases, such proof of loss as we shall reasonably specify, issue to such holder a replacement time draft, accepted by us and payable in the same amount and on the same value date as such time draft.

9. This Letter of Credit shall be governed by, and construed in accordance with, the terms of the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400 (the "Uniform Customs and Practice") and, to the extent not inconsistent therewith, the laws of the State of New York.

10. Communications with respect to this Letter of Credit shall be addressed to us at Chemical Bank, Letter of Credit Department, 55 Water Street, New York, New York 10041, or such address in New York City as we shall notify

to you in writing, specifically referring to the number of this Letter of Credit.

11. Demand for acceptance of time drafts may be made by you under this Letter of Credit at any time during our business hours at our aforesaid address on a Business Day. If such demand is made by you hereunder at or prior to 11:00 a.m. (New York time) on a Business Day, and provided that such demand and the documents presented in connection therewith conform to the terms and conditions hereof, acceptance of any time drafts presented to us at such time shall be made not later than 4:00 p.m. (New York time) on the same day. If such demand is made by you hereunder after 11:00 a.m. (New York time) on a Business Day, and provided that such demand and the documents presented in connection therewith conform to the terms and conditions hereof, such acceptance shall be made not later than 2:00 p.m. (New York time), on the next succeeding Business Day. All payments made by us hereunder or under any time draft drawn hereunder shall be paid without setoff or counterclaim against any person.

Very truly yours,

CHEMICAL BANK,

by

Title:

*Angela E. Thompson*  
*Assistant Treasurer*

SCHEDULE I  
to  
Letter of Credit

<u>Reduction Date</u>	<u>Maximum Amount</u>	<u>Alternate Maximum Amount</u>
January 31, 1986 .....	\$19,485,304.31	\$29,255,455.34
August 1, 1986 .....	\$18,812,587.00	\$28,296,821.87
January 31, 1987 .....	\$18,813,252.49	\$28,021,935.82
August 1, 1987 .....	\$18,055,369.20	\$26,941,939.41
January 31, 1988 .....	\$18,056,118.95	\$26,632,252.82
August 1, 1988 .....	\$17,202,287.66	\$25,414,717.82
January 31, 1989 .....	\$17,203,132.32	\$25,065,013.84
August 1, 1989 .....	\$16,241,206.21	\$23,723,144.62
January 31, 1990 .....	\$16,242,157.81	\$23,358,973.60
August 1, 1990 .....	\$15,158,451.70	\$21,886,823.10
January 31, 1991 .....	\$15,159,523.77	\$21,516,147.57
August 1, 1991 .....	\$13,938,620.30	\$19,915,853.16
January 31, 1992 .....	\$13,939,828.10	\$19,556,480.61
August 1, 1992 .....	\$12,564,358.48	\$17,814,159.58
January 31, 1993 .....	\$12,565,731.33	\$17,470,062.30
August 1, 1993 .....	\$11,002,287.70	\$15,549,187.78
January 31, 1994 .....	\$11,003,375.66	\$15,209,789.09
August 1, 1994 .....	\$ 9,764,378.20	\$13,593,410.63
January 31, 1995 .....	\$ 9,765,457.17	\$13,233,912.72
August 1, 1995 .....	\$ 8,536,703.25	\$11,504,379.64
January 31, 1996 .....	\$ 8,537,639.69	\$11,019,121.24
August 1, 1996 .....	\$ 7,471,202.04	\$ 9,514,408.67
January 31, 1997 .....	\$ 7,472,221.97	\$ 9,093,038.35
August 1, 1997 .....	\$ 6,310,701.07	\$ 7,561,319.71
January 31, 1998 .....	\$ 6,311,932.29	\$ 7,211,536.93
August 1, 1998 .....	\$ 4,909,221.13	\$ 5,520,840.93
January 31, 1999 .....	\$ 4,910,607.98	\$ 5,255,842.83
August 1, 1999 .....	\$ 3,331,222.66	\$ 3,481,041.57
January 31, 2000 .....	\$ 3,334,150.36	\$ 3,334,150.37

SCHEDULE II  
to  
Letter of Credit

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payable</u>	<u>Principal Outstanding</u>
December 26, 1985	\$1,143,010.29	\$1,143,010.29	\$18,057,034.66
June 26, 1986	\$1,765,888.97	\$1,143,010.29	\$17,434,156.17
December 26, 1986	\$1,103,582.04	\$1,103,582.04	\$17,434,156.17
June 26, 1987	\$1,805,317.23	\$1,103,582.04	\$16,732,421.16
December 26, 1987	\$1,059,162.27	\$1,059,162.27	\$16,732,421.16
June 26, 1988	\$1,849,736.99	\$1,059,162.27	\$15,941,846.44
December 26, 1988	\$1,009,118.83	\$1,009,118.83	\$15,941,846.44
June 26, 1989	\$1,899,780.26	\$1,009,118.83	\$15,051,185.01
December 26, 1989	\$952,740.07	\$952,740.07	\$15,051,185.01
June 26, 1990	\$1,956,159.19	\$952,740.07	\$14,047,765.71
December 26, 1990	\$889,223.55	\$889,223.55	\$14,047,765.71
June 26, 1991	\$2,019,675.72	\$889,223.55	\$12,917,313.72
December 26, 1991	\$817,665.87	\$817,665.87	\$12,917,313.72
June 26, 1992	\$2,091,233.22	\$817,665.87	\$11,643,746.37
December 26, 1992	\$737,049.15	\$737,049.15	\$11,643,746.37
June 26, 1993	\$2,184,664.29	\$737,049.15	\$10,196,131.06
December 26, 1993	\$645,415.12	\$645,415.12	\$10,196,131.06
June 26, 1994	\$1,792,620.78	\$645,415.12	\$9,048,925.39
December 26, 1994	\$572,796.95	\$572,796.95	\$9,048,925.39
June 26, 1995	\$1,710,517.98	\$572,796.95	\$7,911,204.54
December 26, 1995	\$500,779.17	\$500,779.17	\$7,911,204.54
June 26, 1996	\$1,488,209.33	\$500,779.17	\$6,923,774.38
December 26, 1996	\$438,274.93	\$438,274.93	\$6,923,774.38
June 26, 1997	\$1,513,743.97	\$438,274.93	\$5,848,305.34
December 26, 1997	\$370,197.74	\$370,197.74	\$5,848,305.34
June 26, 1998	\$1,668,988.78	\$370,197.74	\$4,549,514.30
December 26, 1998	\$287,984.24	\$287,984.24	\$4,549,514.30
June 26, 1999	\$1,750,360.10	\$287,984.24	\$3,087,138.45
December 26, 1999	\$195,415.94	\$195,415.94	\$3,087,138.45
June 26, 2000	\$3,282,554.38	\$195,415.94	0.00

EXHIBIT A  
to  
Letter of Credit

CERTIFICATE

The undersigned, a vice president or assistant vice president of Mercantile-Safe Deposit and Trust Company, as Agent (the "Agent"), hereby CERTIFIES on behalf of the Agent as follows with respect to: (i) the Irrevocable Letter of Credit No. C-289790 dated November 15, 1985 (the "Letter of Credit"), issued by Chemical Bank in favor of the Agent and (ii) the 12.66% Conditional Sale Indebtedness due June 26, 2000 (the "CSA Indebtedness"), under the Conditional Sale Agreement dated as of April 15, 1985, between The Connecticut Bank and Trust Company, National Association, as trustee, and General Motors Corporation (Electro-Motive Division) (the "CSA"):

1. Capitalized terms not otherwise defined herein are used as defined in the Letter of Credit.

2. The CSA Indebtedness is in default pursuant to the terms of the CSA by reason of the occurrence and continuance of an event of default under Article 15(a) of the CSA.

3. No Holder has commenced, or directed the Agent to commence, any proceeding or foreclosure against any collateral securing the CSA Indebtedness without the prior written consent of Chemical Bank.

4. No Holder has, without the prior written consent of Chemical Bank, consented to, or directed the Agent to consent to, any amendment to or waiver of any provision of the CSA or any other document relating to the transactions contemplated thereby, which amendment or waiver required the consent of the Agent or such Holder, as the case may be.

5. If a single time draft for each Holder is presented with this Certificate, the aggregate amount of such time drafts does not exceed the lesser of (A) the sum of the unpaid amount of principal of, and interest on (including interest, if any, at the Overdue Rate (as such term is defined in the CSA), to the extent payable under the CSA), the CSA Indebtedness accruing to the first Business Day that is or follows the seventh day after the date hereof (including any such amount due by reason of a Casualty Occurrence (as such term is defined in the CSA)) and (B) the Maximum Amount as of the date hereof and the value date of such time drafts is the first Business Day that is or follows the seventh day after the date hereof.



6. If two or more time drafts for each Holder are presented herewith, the aggregate amount of the Initial Time Drafts does not exceed the lesser of (A) the Maximum Amount as of the date hereof and (B) the sum of (i) the amount of principal of and interest on the CSA Indebtedness in default as of the date hereof (not taking into account any acceleration of the CSA Indebtedness pursuant to the CSA but including any such amount payable by reason of a Casualty Occurrence) and (ii) interest at the Overdue Rate on any such amount in default (to the extent payable under the CSA) from the date such amount in default was due to the first Business Day that is or follows the seventh day following the date hereof and the value date of the Initial Time Drafts is the first Business Day that is or follows the seventh day after the date hereof.

7. If two or more time drafts for each Holder are presented herewith, the aggregate amount of the Additional Time Drafts exceeds neither (A) the sum of (i) the principal of the CSA Indebtedness outstanding as of the date hereof (other than principal in default as of the date hereof) and (ii) the aggregate amount of interest payable on the principal amount referred to in clause (i) under the CSA on the respective value dates of such drafts and (iii) the aggregate amount of interest, if any, included pursuant to Paragraph 2(iii)(b)(E)(2) of the Letter of Credit nor (B) the amount by which the Alternate Maximum Amount as of the date hereof exceeds the aggregate amount of the Initial Time Drafts.

8. The Additional Time Drafts, if any, payable to each Holder have value dates, respectively, which are consecutive Payment Dates as set forth on Schedule II to the Letter of Credit, commencing the Payment Date next following the date hereof, unless such next Payment Date is less than seven days after the date hereof, in which case the value date of the Additional Time Draft for such Holder earliest to mature is the first Business Day that is or follows the seventh day after the date hereof. The number of Additional Time Drafts payable to each Holder does not exceed the lesser of 10 and the number of Payment Dates subsequent to the date hereof.

9. Except to the extent of any interest included pursuant to Paragraph 2(iii)(b)(E)(2) of the Letter of Credit, in each case in which Additional Time Drafts bear the same value date, the aggregate amount of such Additional Time Drafts bearing such value date does not exceed the amount set forth opposite such value date on Schedule II to

the Letter of Credit under the heading "Debt Service" (or, if such value date is not a Payment Date, the amount so set forth opposite the Payment Date immediately preceding such value date), except the Additional Time Drafts with the latest value date, which are in an aggregate amount not exceeding the sum of (A) the applicable Debt Service amount as set forth on Schedule II opposite such value date plus (B) the amount set forth on Schedule II under the heading "Principal Outstanding" opposite the value date of such Additional Time Drafts (adjusted to reflect any amounts of principal prepaid on or prior to the date hereof and not reflected in the amount under such heading).

10. The allocation of amounts between any time drafts bearing the same value date accurately reflects the proportionate interests of the Holders to which such time drafts are payable.

11. The Certificates of Interest presented herewith represent all the CSA Indebtedness outstanding. For each Holder, an assignment of all such Holder's interest in the CSA Indebtedness, substantially in the form of Exhibit C to the Letter of Credit, duly executed by or on behalf of such Holder, is presented herewith.

IN WITNESS WHEREOF, this certificate has been  
executed this       day of       . 1/

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Vice President or  
Assistant Vice President

\_\_\_\_\_  
1/ The Drawing Date.

EXHIBIT B  
to  
Letter of Credit

TIME DRAFT

New York, New York  
[the Drawing Date]

For value received,  
On [date 1/] pay to the order of [name of Holder],  
U.S.                      Dollars (US \$                      ). 2/ Charge to  
account of Chemical Bank, Irrevocable Letter of Credit  
No. C-289790, dated November 15, 1985.

Chemical Bank  
Letter of Credit Department  
55 Water Street  
New York, New York 10041

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,  
without recourse,

by

\_\_\_\_\_  
Vice President or  
Assistant Vice President

Attest: .

\_\_\_\_\_

\_\_\_\_\_  
1/ In the case of a drawing by a single time draft for each Holder or, if two or more time drafts are presented for each Holder, the Initial Time Drafts, the first Business Day that is or follows the seventh day after the Drawing Date. In the case of any Additional Time Drafts, a Payment Date except, if applicable, as otherwise provided in Paragraph 2(iii)(b)(D) of the Letter of Credit.

2/ By wire transfer in immediately available funds for the account of the Holder to be specified.

EXHIBIT C  
to  
Letter of Credit

ASSIGNMENT

Subject to the terms and conditions hereof, [name of Holder] ("Holder") HEREBY transfers, assigns and conveys to CHEMICAL BANK, a New York banking corporation ("Chemical"), for good and valuable consideration paid by Chemical to Holder, all its right, title and interest in and to:

(a) the Participation Agreement dated as of April 15, 1985 (the "Participation Agreement"), as amended, among Consolidated Rail Corporation (the "Lessee"), Mercantile-Safe Deposit and Trust Company, as Agent (the "Agent"), The Connecticut Bank and Trust Company, National Association, as Trustee (the "Lessor"), Irving Leasing Corporation (the "Beneficiary"), General Motors Corporation (Electro-Motive Division) (the "Builder"), and Chemical, relating to the leveraged lease financing of 25 SD50 diesel-electric locomotives (the "Equipment");

(b) the Conditional Sale Agreement dated as of April 15, 1985 (the "CSA"), between the Builder and the Lessor and the 12.66% Conditional Sale Indebtedness due June 26, 2000 (the "CSA Indebtedness") thereunder;

(c) the Lease of Railroad Equipment dated as of April 15, 1985 (the "Lease"), between the Lessee and the Lessor;

(d) the Assignment of Lease and Agreement dated as of April 15, 1985, between the Lessor and the Agent;

(e) the Consent and Agreement dated as of April 15, 1985, between the Lessee and the Agent;

(f) the Agreement and Assignment dated as of April 15, 1985, between the Builder and the Agent;

(g) the Certificate[s] of Interest dated

, [and

respectively,] issued by the Agent to Holder and reflecting Holder's interest in the CSA Indebtedness;

(h) the Trust Estate under the Trust Agreement dated as of April 15, 1985, between the Beneficiary and The Connecticut Bank and Trust Company, National Association, including the Equipment and the income and proceeds therefrom (including insurance proceeds); and

(i) all certificates and opinions of counsel delivered in connection with the First Delivery Date (as such term is defined in the CSA) on May 6, 1985 and on or with respect to each Closing Date (as such term is defined in the CSA).

This Assignment has been executed and delivered by Holder in connection with a drawing (the "Drawing") under Chemical's Irrevocable Letter of Credit No. C-289790 dated November 15, 1985 (the "Letter of Credit"), and this Assignment shall be of no force or effect until and unless

Chemical performs in full its obligations under the Letter of Credit to accept time drafts presented in the Drawing. Notwithstanding the first paragraph of this Assignment, Holder does not transfer, assign or convey to Chemical any of Holder's right, title or interest in or to any indemnity provision of any of the agreements and instruments referred to in clauses (a) through (i) above, including without limitation in or to Article 13 of the CSA or Section 6 or 9 of the Lease, to the extent any such indemnity relates to costs or liabilities incurred by Holder.

In consideration of the foregoing, Chemical agrees to be bound by the terms of the Participation Agreement and agrees to perform all Holder's obligations thereunder and under the documents listed in subparagraphs (b) through (h) above arising on or after the effective date of this Assignment.

Chemical represents that it is acquiring its interest in the CSA Indebtedness for its own account or for the account of one or more pension or trust funds or institutional accounts, for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same; provided, however, that the disposition of its property will at all times be within its control. Chemical further represents that it is duly authorized to execute and

accept this Assignment and to perform the transactions and obligations contemplated hereby and by the documents listed in subparagraphs (a) through (h) of the first paragraph hereof; and that this Assignment shall not be made in a manner that will violate the Securities Act of 1933 or ERISA.

Holder represents that, Holder has not transferred, assigned or conveyed, or agreed or purported to transfer, assign or convey, to any Person (which term shall include any individual, corporation, partnership, trust or governmental authority or entity) any of the rights, titles and interests purported to be transferred, assigned or conveyed hereby, except pursuant hereto and except for any right, title or interest which has been retransferred, reassigned or reconveyed to Holder, and upon the satisfaction of the conditions precedent hereto, this Assignment validly and effectively transfers, assigns and conveys to Chemical all the rights, titles and interests purported to be transferred, assigned and conveyed hereby, free and clear of any interest or claim of any other Person.

Capitalized terms not defined herein are used as defined in the Participation Agreement.

IN WITNESS WHEREOF, Holder has caused this Assignment to be executed on its behalf this            day of

[HOLDER],

by

**Accepted and agreed:**

**CHEMICAL BANK,**

by

**Title:**



EXHIBIT D  
to  
Letter of Credit

**NOTICE OF PAYMENT OF  
CSA INDEBTEDNESS IN FULL**

**Re: Irrevocable Letter of Credit No. C-289790**  
**Dated November 15, 1985**

1. The undersigned is Agent pursuant to the Participation Agreement as such term is defined in the above-referenced Irrevocable Letter of Credit issued for our benefit as such Agent (the "Letter of Credit").
2. As of [date], the entire principal amount of and all interest accrued on the CSA Indebtedness (as such term is used in the Letter of Credit) was paid in full.
3. The original of the Letter of Credit is herewith surrendered for cancelation.

IN WITNESS WHEREOF, the undersigned has executed  
and delivered this Notice as of the            day of           

**MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,**

by

**Title:**

EXHIBIT E  
to  
Letter of Credit

NOTICE OF TRANSFER OF  
LETTER OF CREDIT

Re: Irrevocable Letter of Credit  
No. C-289790, Dated November 15, 1985

1. The undersigned has transferred to [insert name and address of Successor Agent] (the "Successor Agent") all rights of the undersigned to draw under the above-referenced Irrevocable Letter of Credit (the "Letter of Credit"). The Successor Agent has succeeded the undersigned as Agent under the Participation Agreement (as such term is defined in the Letter of Credit).

2. The original of the Letter of Credit is attached hereto. The undersigned requests that you issue to the Successor Agent a replacement Letter of Credit identical to the attached Letter of Credit except for substitution of the name and address of the Successor Agent for the name and address of the undersigned where appropriate.

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

by

\_\_\_\_\_  
Title:

Exhibit D

[Letterhead of Staff Counsel for  
The Mutual Life Insurance Company of New York]

Transfer of Interest in Consolidated Rail  
Corporation 12.66% Conditional Sale  
Indebtedness Due June 26, 2006

Chemical Bank  
277 Park Avenue  
New York, New York 10019

Mercantile-Safe Deposit  
and Trust Company  
2 Hopkins Plaza  
Baltimore, Maryland 21203

Dear Sirs:

I am Associate General Counsel of The Mutual Life Insurance Company of New York ("MONY"). As such counsel, I have examined originals, or copies certified or otherwise identified to my satisfaction, of (i) the Assignment Agreement dated as of November 15, 1985 (the "Assignment Agreement"), (ii) the Participation Agreement dated as of April 15, 1985 (the "Participation Agreement"), among Consolidated Rail Corporation, The Connecticut Bank and Trust Company, National Association, as trustee, Irving Leasing Corporation, General Motors Corporation (Electro-Motive Division), and each of you, and (iii) Participation Agreement Amendment No. 1 dated as of November 15, 1985 (the "Amendment") among certain parties to the Participation Agreement and MONY, and such other documents, corporate records and other instruments as I have deemed necessary for the purposes of this opinion.

Based upon such examination, it is my opinion  
that:

1. Each of the Assignment Agreement and the Amendment has been duly authorized, executed and delivered by MONY and is a legal, valid and binding obligation of MONY, enforceable against MONY in accordance with its terms,

subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

2. The appointment by MONY and the MONY Separate Account (as such term is defined in the Assignment Agreement), pursuant to the Amendment, of the Agent as attorney-in-fact for the purpose of executing assignments to Chemical of the CSA Indebtedness (as such term is used in the Assignment Agreement) in connection with a drawing under the Letter of Credit constitutes a legal and valid appointment of the Agent as attorney-in-fact for such purpose, binding upon MONY and the MONY Separate Account and effective to confer upon the Agent all the powers required in order to make each such assignment executed by the Agent as attorney-in-fact a legal, valid and binding obligation of MONY and the MONY Separate Account, as the case may be, enforceable against such party in accordance with its terms.

Very truly yours,

## INDEMNITY AGREEMENT

FOR VALUE RECEIVED, and in order to induce The Mutual Life Insurance Company of New York ("MONY") to purchase from Chemical Bank ("Chemical"), for its own account and for the account of a separate account managed by MONY (the "MONY Separate Account"; MONY and the MONY Separate Account, together with their respective successors and assigns as holders of the CSA Indebtedness (as such term is defined below), being hereinafter referred to as the "Indemnitees"), pursuant to an Assignment Agreement dated as of November 15, 1985, between Chemical and MONY, the 12.66% Conditional Sale Indebtedness due June 26, 2000 (the "CSA Indebtedness"), under the Conditional Sale Agreement dated as of April 15, 1985 (the "CSA"), between General Motors Corporation (Electro-Motive Division) and The Connecticut Bank and Trust Company, National Association ("CBT"), as trustee (in such capacity as trustee, the "Lessor") for Irving Leasing Corporation (the "Beneficiary"), Chemical hereby indemnifies and agrees to hold each Indemnatee harmless against any claim made against any Indemnatee by Consolidated Rail Corporation (the "Lessee"), the Lessor, the Beneficiary or any successor, assignee, trustee, receiver, liquidator or other person acting on behalf of, or on behalf of creditors of, any of the foregoing or the trust

estate (the "Trust") created under the Trust Agreement dated as of April 15, 1985, between CBT and the Beneficiary that results in such Indemnatee being obligated to return any payment received by such Indemnatee in respect of principal of or interest on the CSA Indebtedness because such payment has been deemed a preferential payment or a fraudulent transfer in any bankruptcy, insolvency or similar proceeding with respect to the Lessee, the Lessor, the Beneficiary or the Trust (or any successor or assignee thereof).

It shall be a condition of receipt of payment by any Indemnatee hereunder that such Indemnatee shall give written notice to Chemical of such claim with reasonable promptness after the Indemnatee shall have actual knowledge of such claim and shall permit Chemical to defend any legal proceeding against such Indemnatee in respect of such claim, at the sole cost and expense of Chemical, with counsel selected by Chemical and reasonably satisfactory to such Indemnatee, and shall not take any action to pay, other than as required by an order of a court of competent jurisdiction, or compromise such claim without the prior written consent of Chemical. Chemical will pay any Indemnatee for any claim indemnified against hereunder on the date on which such Indemnatee returns the amount which is the subject of such claim as required by an order of a court of competent jurisdiction (or, if later, within three days

after such Indemnatee notifies Chemical of such return), it being understood that if, as a result of such order being stayed, such Indemnatee is not required to return such amount, such Indemnatee shall not return such amount until such stay ceases to be in effect or until such Indemnatee is otherwise required to return such amount. This Indemnity Agreement shall terminate on the date three years after the earlier of (i) the maturity date of the CSA Indebtedness, (ii) the date of payment in full of the CSA Indebtedness or (iii) the date of acceptance of time drafts by Chemical under the Irrevocable Letter of Credit No. C-289790 dated November 15, 1985, issued by Chemical to Mercantile-Safe Deposit and Trust Company, as Agent for the holders of the CSA Indebtedness, except with respect to claims notice of which has been given to Chemical within such three-year period. The foregoing indemnity is in support of and ancillary to the obligations of Chemical under said Letter

of Credit and shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has executed this Indemnity Agreement this 15<sup>th</sup> day of November 1985.

CHEMICAL BANK,

by

*Yate / Adams*  
Title: *Vice President*

ACCEPTED:

THE MUTUAL LIFE INSURANCE  
COMPANY OF NEW YORK,

by

*Emilia F. Wiener*  
Title:

Assistant Vice President